

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

March 31, 2006

In the Matter of
Removal Specialists

Docket No. 2006-011
File No. PAN-NE-05-9001-24C
Lynn

RECOMMENDED DECISION
ON MOTION FOR RECONSIDERATION

On March 7, 2006 I recommended that this matter be dismissed for lack of jurisdiction due to the untimeliness of the petitioner's Notice of Claim for an adjudicatory hearing. The recommendation was adopted in a Final Decision dated March 9, 2006.

The petitioner filed a timely Motion for Reconsideration of the Final Decision, providing additional explanation in more detail of the reasons for its confusion in the days following receipt of the PAN, the efforts it undertook to have its questions answered, and the resulting delay in filing its Claim. The PAN was mailed in the same envelope and arrived with a Unilateral Enforcement Order (UAO). According to the petitioner's Motion, this simultaneous receipt "caused great confusion as to the requirements of both the documents" as well as "uncertainty with our understanding of the obligations and orders we were required to comply with." Motion For Reconsideration, page 1-2.

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The Department of Environmental Protection (MassDEP) opposed the Motion for Reconsideration citing the standard for granting such a motion in 310 CMR 1.01(14)(e) when the Final Decision is based on a clearly erroneous finding of fact or ruling of law. The rule also provides that when a motion “repeats matters adequately considered in the final decision, renews claims or arguments that were previously raised, considered and denied, or where it attempts to raise new claims or arguments, it may be summarily denied.” Id. Arguing the petitioner’s motion raised no clearly erroneous finding of fact or law, MassDEP also asks for the Motion’s denial as it presents arguments previously raised and denied, or alternatively attempts to raise new arguments.

The Final Decision found lack of jurisdiction as a result of untimeliness, and included consideration of the petitioner’s claims of confusion upon receiving the PAN and UAO as well as the implications of the petitioner’s attempts to discuss its questions with MassDEP before filing its Claim. Recommended Final Decision, page 4-5. An untimely claim divests the agency of jurisdiction to hear it, and a lack of jurisdiction cannot be waived at the discretion of the agency. As no claim of factual or legal error has been made concerning the dispositive issue of the timeliness of the petitioner’s Claim, the standard of 310 CMR 1.01(14)(e) for reconsideration has not been met. I recommend denial of the petitioner’s Motion for Reconsideration for the reasons set out in the Department’s Motion to Dismiss.

NOTICE

This decision is a recommended decision by the Presiding Officer on a motion for reconsideration. It has been transmitted to the Commissioner for his final decision on reconsideration on the motion. This decision is therefore not a final decision on reconsideration,

and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's final decision on the motion for reconsideration is subject to appeal to court and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this recommended decision on the motion for reconsideration or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion directs otherwise.

This final document copy is being provided to you electronically by the
Department of Environmental Protection. A signed copy of this document
is on file at the DEP office listed on the letterhead.

Ann Lowery
Presiding Officer

Adopted by Commissioner Robert W. Golledge, Jr., April 11, 2006.